

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR07-292

February 20, 2008

LAYNE CARVER
APPELLANT

AN APPEAL FROM LONOKE
COUNTY CIRCUIT COURT
[CR2005-450]

V.

HON. FLOYD G. ROGERS, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Layne Carver appeals from his conviction for conspiracy to commit the second-degree murder of his ex-girlfriend, Pilar Butler. He argues that the State failed to prove that he engaged in any overt act in pursuance of the conspiracy. To the contrary, substantial evidence supports that in addition to soliciting others to blow up Ms. Butler's house, appellant committed numerous overt acts in pursuance of the conspiracy. Accordingly, we hold that the trial court did not err in denying appellant's motion for a directed verdict, and we affirm his conviction.

I. Facts

The State's case was established during appellant's jury trial through the testimony of Ms. Butler; James Spencer, the co-conspirator who reported the plan to the police; Bob Butler, Ms. Butler's father; Lieutenant Steve Finch, of the Lonoke Police Department, to whom Spencer reported the conspiracy; Arthur Raff, of the Arkansas State Police, who masqueraded as Spencer's friend and agreed to assist with the operation; and appellant, who

testified that the conspiracy to blow up Ms. Butler's house was Spencer's idea. The evidence adduced at trial, supporting the verdict, was as follows.

Ms. Butler and appellant began dating in 2002 or 2003; during part of that time, appellant lived with Ms. Butler in her rural home in Butlerville, near Ward, Arkansas. During the relationship, Ms. Butler obtained several no-contact orders against appellant. The parties ultimately separated in November 2004. After they parted, appellant threatened to burn Ms. Butler's house and make it look like an electrical fire; he also made numerous other threats against her and harassed her by calling her at her workplace. Ms. Butler's father was so terrified that he guarded her house at night. Based on charges resulting from appellant's threats against Ms. Butler, a court proceeding was set for August 2005. Ms. Butler was to be the State's principal witness.

Meanwhile, Spencer met appellant in February 2005. According to Spencer, beginning in May 2005, appellant began asking him about explosives and how to make bombs. Appellant told Spencer that Ms. Butler was going to testify against him at an upcoming trial and that he "wanted to scare her so she would keep her mouth shut." Appellant took Spencer to Butlerville approximately six times to show him how to get to Ms. Butler's house. He also showed Spencer how to get under the house to set the explosives. Spencer said that appellant drew maps and made notes on each trip.

Spencer eventually believed that appellant actually meant to blow up Ms. Butler's house, so he contacted Lieutenant Finch and reported the plan on June 21, 2005. Finch was already familiar with the parties' history. Spencer was equipped with a recording device, but the recording of the next meeting between Spencer and appellant, on July 1, 2005, was of poor quality. It was decided that an undercover officer was needed to accompany Spencer to get a better recording. Spencer told appellant that he had re-injured his leg that he previously hurt in an automobile accident, and that he would not be able to walk across the

field to the Butler home to set the explosives. Therefore, Spencer told appellant that he had a friend from Memphis who could help them. The “friend” was Officer Raff, who assumed the name of “Tom Harris.” Appellant accepted the new arrangement.

On July 8, 2005, Spencer and Raff met appellant at appellant’s home. Raff asked appellant whether he wanted only the buildings blown up or people killed, or both, and appellant replied that he wanted it to look like a methamphetamine lab blew up so that the victims would be spending all of their money to defend themselves. Raff warned appellant that people could get hurt if something went wrong, and asked appellant if he was all right with that; appellant said “he would have to be.” Additionally, appellant commented that if Ms. Butler was in the house at the time of the explosion, she would “just be a casualty of war.”

Raff and appellant agreed on a price of \$1500 for Ms. Butler’s house and \$500 for her father’s shop. Because appellant had no money but wanted the job done that weekend, and because Raff refused to perform without payment, appellant agreed that \$100 of the \$140 he had paid Spencer for information would go to Raff as a down payment, and additionally, agreed that Raff would hold appellant’s riding lawn mower as collateral until appellant paid the remainder of the fee.

The parties then went to the Butler property so that appellant could show Raff which structures he wanted destroyed – Ms. Butler’s house and her father’s nearby shop. Appellant showed Raff how to walk through the nearby woods to approach Ms. Butler’s house undetected and told him when the victims would be home over the weekend. Raff explained to appellant that if anyone caught him planting the explosives that he (Raff) would kill them because he would not leave any witnesses; appellant nodded his head, indicating his agreement. Appellant then drew a map of the residence, showing the roads leading in, and marked a place on the house showing where Raff could get underneath the house to plant

the explosives.

Next, the parties drove to a convenience store on the pretext of Raff purchasing a pack of cigarettes. Raff again went over the payment terms, and appellant wrote and signed a bill of sale for his lawn mover. Raff again told him that he would kill the occupants if they found him planting the explosives, and appellant said “he’d have to be O.K. with that.” Raff told him that they could cancel the arrangement but appellant told Raff that Raff needed to do what he needed to do and that appellant would “have to deal with it.” Thereafter, the officer took off his hat, which signaled the other officers to arrest appellant.

At the close of the State’s case, appellant moved for a directed verdict, raising several arguments, only one of which is raised on appeal: that the State failed to prove he engaged in any overt act to further the conspiracy because “all we’ve got is talking.” The trial court denied the motion and the subsequent renewal thereof, and the jury found appellant guilty of conspiracy to commit second-degree murder.

II. Sufficiency of the Evidence

Appellant’s sole argument is that the trial court erred in denying his motion for a directed verdict. A motion for a directed verdict is a challenge to the sufficiency of the evidence. *See Thomas v. State*, 92 Ark. App. 425, 214 S.W.3d 863 (2005). On appeal from the denial of a motion for a directed verdict, the sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Circumstantial evidence may constitute substantial evidence, but it must be consistent with the defendant’s guilt and inconsistent with any other reasonable conclusion. *Id.* Substantial evidence is that evidence which is of sufficient force and character to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* We consider only the evidence supporting the guilty verdict, and view the evidence in the light most favorable to the State. *Id.* Determinations of credibility are left to the jury. *Id.*

A person commits second-degree murder if he knowingly causes the death of another person under circumstances manifesting extreme indifference to the value of human life; or with the purpose of causing serious physical injury to another person, he or she causes the death of any person. See Ark. Code Ann. § 5-10-103 (Repl. 2006). In turn, a person conspires to commit an offense if, with the purpose of promoting or facilitating the commission of any criminal offense:

- (1) The person agrees with another person or other persons that:
 - (A) One (1) or more of the persons will engage in conduct that constitutes that offense; or
 - (B) The person will aid in the planning or commission of that criminal offense; and
- (2) The person or another person with whom the person conspires does any overt act in pursuance of the conspiracy.

Ark. Code Ann. § 5-3-401 (Repl. 2006). It is not a defense to prosecution for conspiracy that a person with whom a defendant conspires is immune to prosecution or has feigned agreement. See Ark. Code Ann. § 5-3-103(b)(2).

Here, appellant challenges only the third requirement, that he engaged in any overt act in pursuance of the conspiracy. Without citation to authority, he argues that his conversations regarding the plan were merely “idle chatter,” and that the maps and bill of sale were only “tangible evidence of the agreement” that did not constitute an overt act.

Appellant is correct that a conspiracy to commit murder must constitute more than talk about the plan. See *Jones v. State*, 45 Ark. App. 28, 871 S.W.2d 403 (1994). However, in the instant case, appellant did much more than talk about the plan. In short, the payment of the money alone constituted an overt act. See *Strickland v. State*, 16 Ark. App. 293, 701 S.W.2d 127 (1985). Here, appellant paid \$140 to Spencer “for information” and agreed that \$100 of that money would go to Raff as a down payment. Further, appellant offered the bill of sale as collateral pending payment of the rest of the fee. Thus, either of these acts alone constituted a sufficient overt act to sustain appellant’s conviction.

In addition, appellant committed several more overt acts in pursuance of the conspiracy. The agreement was simply that Raff would blow up the specified property; appellant went well beyond merely soliciting the agreement in orchestrating the details and personally taking Raff and Spencer to the Butler property. He took Spencer to the property *seven times* (including the final trip with Raff), mapped out the property for Spencer, and explained to Spencer how he wanted the job carried out. Appellant alone determined the date that the operation should be carried out. Appellant also took Officer Raff to the property, showed the officer how to approach the property undetected, drew a map, told the officer where to go under the house to plant the explosives, and informed the officer when the victims would be home that weekend. Finally, appellant repeatedly confirmed his agreement that Ms. Butler should be killed, if necessary to carry out the plan. Such facts were sufficient to support his conviction for conspiracy to commit second-degree murder. *See, e.g., Jones, supra* (affirming a criminal-conspiracy-to-commit-capital-murder conviction where the defendant and the informer discussed how the grocery owner would be killed in a robbery, how to dispose of the body, whether the crime should be committed on a weeknight or Saturday night, and where the undercover officer's procurement of and the defendant's acceptance of rifle scope constituted an overt act).

Affirmed.

VAUGHT and BAKER, JJ., agree.